

1 E. N. Ordway

2 A. We were located at the company's
3 offices in either a conference room or
4 adjacent rooms, so we were always
5 together, frankly.

6 Q. Now, you said we.

7 Did you include yourself, Edwin
8 Ordway, in that we or was it the deal team
9 to which you had referenced in your last
10 answer?

11 A. I was incorrectly using the
12 royal we. I meant Capstone, not me.

13 Q. I'm glad I'm not the only one
14 making the mistake.

15 Did you understand that they
16 communicated with each other about the GSC
17 matter regularly by e-mail?

18 A. I don't know.

19 Q. Do you have an understanding as
20 to whether the members of your deal team
21 kept notes during the case?

22 A. I don't know for a fact but I
23 assume they did.

24 Q. Were you involved in responding
25 on behalf of Capstone to document requests

1 E. N. Ordway

2 served both by Black Diamond and by the
3 United States Trustee on this matter?

4 A. I'm sorry, could you ask the
5 question again?

6 Q. Sure.

7 Did you have any personal
8 involvement in responding on behalf of
9 Capstone to document requests that my
10 client, Black Diamond, and Ms. Schwartz's
11 client, the United States Trustee, served
12 on Capstone with respect to this motion?

13 A. No.

14 Q. Who handled that?

15 A. Principally one of my senior
16 colleagues, Ron Zaidman, but some of the
17 other members of the deal team as well.

18 Q. How much, approximately, did
19 Capstone receive for its prepetition
20 services from GSC?

21 A. I don't remember.

22 Q. Was it in the vicinity of \$4
23 million?

24 MR. MANDELSBERG: Objection.

25 A. I don't remember.

1 E. N. Ordway

2 Q. Do you have a view personally as
3 to whether or not the rates Capstone
4 charges for the services of its
5 professionals are market rates?

6 MR. MANDELSBERG: Objection.

7 A. I believe they're market rates.

8 Q. How does Capstone attempt to
9 ensure that the rates its professionals
10 charge reflect the market?

11 A. We regularly collect information
12 about billing rates for our competitors.
13 We compare to them.

14 Q. How do you collect those
15 materials?

16 A. A lot of it is publicly
17 available through retention documents like
18 this, for example, or even on some cases
19 we've been able to see detailed billings
20 from other professional firms like
21 ourselves.

22 Q. How often do you do this?

23 A. We adjust our bill rates
24 typically annually, January 1, but we
25 collect information about competitor

1 E. N. Ordway

2 billing rates throughout the year.

3 Q. Is the decision to change the
4 rates made annually or more frequently?

5 A. Typically annually.

6 Q. When the rates are set annually,
7 is the attempt made to have your rates
8 reflect the market of professionals of
9 like experience and expertise? Isn't that
10 what we mean by market?

11 MR. MANDELSBERG: Objection.

12 A. We thoughtfully review our bill
13 rates and consider where we want to
14 position ourselves in the market.

15 Q. How does Capstone attempt to
16 position itself in the market?

17 A. We like to establish our bill
18 rates below some of the more larger
19 competitors of ours.

20 Q. How much below?

21 A. Ten to fifteen percent.

22 Q. Do you attempt to do that
23 consistently?

24 A. Yes.

25 Q. Is there a process you go

1 E. N. Ordway
2 through in addition to gathering
3 disclosure documents in order to do that?

4 A. I'm not sure of your question.

5 Q. If you're trying to remain, as
6 you said, ten to fifteen percent below
7 certain competitors, how do you determine
8 what your competitors -- and I use that
9 word in quotation marks -- are charging?

10 MR. MANDELSBERG: Objection.

11 Asked and answered.

12 You can answer it again.

13 A. We collect publicly available
14 information and can see specific bill
15 rates and titles related to many of our
16 competitors and we use that information to
17 decide what our billing rates should be.

18 Q. So you're looking at disclosure
19 documents, you're looking at particular
20 individuals with particular levels of
21 experience and education, you're seeing
22 what they charge, you're comparing them to
23 people in your organization and then
24 fixing Capstone rates based on what you
25 see they are charging.

1 E. N. Ordway

2 Do you I have that more or less
3 right?

4 A. More or less right. I have no
5 idea what the educational background is
6 but we do look at bill rates in the
7 context of titles and we know who many of
8 the individuals are.

9 Q. Why does Capstone attempt to
10 position itself ten to fifteen percent
11 below these other individuals you
12 mentioned?

13 A. We are in an interesting
14 situation. We're neither fish nor fowl.
15 We're not a small firm, we're not a large
16 firm. We like to be able to compete for
17 middle market, lower middle market
18 engagements which would require that we
19 have competitive bill rates. What I mean
20 by that is lower than what someone like,
21 for example, an Alvarez and Marsal or an
22 Alex Partners and FTI would charge.

23 Q. When you say you're neither fish
24 nor fowl, you mean Capstone isn't like
25 those firms, an Alvarez and Marsal or an

1 E. N. Ordway

2 Alex Partners?

3 MR. MANDELSBERG: Objection.

4 Mischaracterizes his testimony which
5 referred to size.

6 MR. WOOLNER: I want to
7 understand the difference why Capstone
8 isn't that kind of fish.

9 A. We're not that big.

10 Q. Do you consider Alvarez and
11 Marsal and Alex Partners peer firms?

12 A. Yes.

13 Q. Why?

14 A. We have similar capabilities.

15 Q. Is the only difference then one
16 of size?

17 A. Size and geographic reach.

18 Q. In order to maintain your status
19 with the clients you're attempting to woo
20 and your position as neither fish nor fowl,
21 to use your phrase, do you have to ensure
22 that billings to those clients are
23 different in any way from what you expect
24 that firms like Alex Partners or Alvarez
25 and Marsal would render?

1 E. N. Ordway

2 A. I don't understand the question.

3 Q. You referred earlier to rates
4 times hours.

5 Do you remember that?

6 A. Yes.

7 Q. The bill a client gets when it's
8 rates times hours is a function of the
9 hourly rate and the hours worked.

10 Are you with me so far?

11 A. Yes.

12 Q. If you're neither fish nor fowl
13 compared to Alex Partners and Alvarez and
14 Marsal with respect to rates, did you also
15 have to position yourself differently with
16 respect to the number of hours worked
17 recognizing that bills are a combination
18 of rates times hours?

19 MR. MANDELSBERG: Objection.

20 A. The number of hours as incurred
21 or what's required by the engagement. It
22 has nothing to do with competition.

23 Q. When you reviewed bills, not
24 just on the GSC matter but on other
25 matters where you were the individual

1 E. N. Ordway

2 reviewing bills, were you reviewing the
3 number of hours worked on particular
4 matters for reasonableness?

5 A. Yes.

6 Q. Were you reviewing them for
7 whether they made sense compared to what a
8 peer firm would be incurring?

9 A. Not in that context.

10 Q. Why not?

11 A. I'm looking at our invoices to
12 make sure that I think they're fair for
13 the services provided.

14 Q. If you believed that a firm you
15 considered your peer would be rendering a
16 lower bill for the same services, would
17 you still have rendered a bill in the rate
18 times the hours?

19 MR. MANDELSBERG: Objection.

20 Mischaracterizes his testimony.

21 Hypothetical. Conjectural.

22 You can answer if you understand
23 it.

24 A. What another firm might charge
25 sometimes comes into consideration, but I

1 E. N. Ordway

2 look at it strictly from do I believe that
3 the level of effort justifies the related
4 invoice.

5 Q. Is that what you describe as
6 billing judgment?

7 MR. MANDELSBERG: Objection.

8 Q. It's what we call it at our
9 firm.

10 A. I've never used that term
11 before.

12 MR. MANDELSBERG: And you also
13 established no basis that Mr. Ordway
14 knows what you do at your firm.

15 MR. WOOLNER: What I do isn't
16 relevant, Steve, what he does is.

17 MR. MANDELSBERG: I know but your
18 question assumed that he knows what
19 you do at your firm.

20 Q. What have Capstone's revenues on
21 the GSC engagement post petition been to
22 date, approximately?

23 MR. MANDELSBERG: Objection to
24 the use of the word "revenues."

25 Are you referring to fees

1 E. N. Ordway

2 received after the GSC engagement?

3 MR. WOOLNER: Yes, but only post
4 petition.

5 A. I'm not sure.

6 Q. Approximately six million?

7 A. I'm not sure.

8 Q. The order and the engagement
9 letter that we looked at reserved the
10 right for Capstone to seek a success fee;
11 correct?

12 A. Yes.

13 Q. The engagement letter spoke of
14 the amount and conditions being mutually
15 agreed for a success fee.

16 Do you remember that?

17 A. Yes.

18 Q. Were the amount and conditions
19 ever mutually agreed?

20 MR. MANDELSBERG: Objection.

21 Asked and answered.

22 You can answer again.

23 A. I understand they were agreed
24 to.

25 Q. When?

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1 E. N. Ordway

2 A. I'm not sure.

3 Q. By whom?

4 A. I'm not sure.

5 Q. How?

6 A. I'm not sure.

7 Q. Who told you they were mutually
8 agreed?

9 A. Bob Manzo.

10 Q. When did he tell you that?

11 A. I don't remember.

12 Q. This year?

13 MR. MANDELSBERG: Objection.

14 You mean for the first time, at
15 any time?

16 A. I'm not sure.

17 Q. Did he tell you last year?

18 A. I don't recall.

19 Q. In 2010?

20 A. Not 2010.

21 Q. So it was either 2011 or this
22 year that he told you the conditions that
23 had been satisfied, that there had been
24 mutual agreement on the conditions?

25 A. Yes.

1 E. N. Ordway

2 Q. Did you ask him, press him in
3 any way for details?

4 A. No.

5 Q. Did you ask him how quickly can
6 we make an application for our success
7 fee?

8 A. I asked him when would it be
9 appropriate to file the application and I
10 went with his advice.

11 Q. What did he tell you?

12 A. I don't remember.

13 Q. Now, the application, in fact,
14 was filed in late January, 2012, this
15 year.

16 Does that help you in any way to
17 remember what Bob Manzo's advice to you
18 was about when it would be appropriate to
19 seek a success fee?

20 A. I don't remember.

21 Q. So far as you, Mr. Ordway, are
22 you aware, when did Capstone
23 representatives first disclose to anyone
24 outside the firm their actual intention to
25 seek a success fee? And in that question,

1 E. N. Ordway

2 I distinguish and want you to distinguish
3 between the right that was reserved to
4 seek a success fee and the actual
5 intention to seek such a fee.

6 A. I understand the question. I
7 don't know the answer.

8 Q. Are you aware of anyone from
9 Capstone ever telling anyone prior to the
10 filing of the motion at the end of
11 January, 2012 that Capstone intended to
12 seek a success fee?

13 A. I'm aware of that Manzo spoke to
14 others about it prior to that date.

15 Q. With whom did he speak and when?

16 A. I don't know.

17 Q. Do you have any understanding as
18 to what Mr. Manzo told those individuals?

19 A. No.

20 MR. WOOLNER: We've been going
21 for about an hour and a quarter.

22 Is this a good time for a break?

23 MR. MANDELSBERG: Sure.

24 MR. WOOLNER: Let's go off the
25 record.

1 E. N. Ordway

2 (Whereupon a break was taken)

3 Q. Mr. Ordway, in response to a
4 question I asked you about with whom the
5 amount and conditions of the success fee
6 were to be mutually agreed, you responded
7 that it would be with the estate.

8 Do you remember that?

9 A. Yes.

10 Q. Can you tell me what you meant
11 when you referred to the estate in that
12 answer?

13 A. The debtor.

14 Q. Did that mean with Mr. Eckert
15 and Mr. Frank or with someone else?

16 A. With Frank and Eckert and, to
17 the extent that the court so required, the
18 trustee that was appointed.

19 Q. Let me ask you to take a look at
20 a letter that is encompassed within what
21 was previously marked as Exhibit BD 5.

22 A. (Reviewing).

23 Q. And the item within BD 5 to
24 which I will direct your attention is
25 marked as Exhibit A. It bears production

1 E. N. Ordway
2 number CAP 5. It's a letter dated
3 November 3, 2010.

4 Have you ever seen that letter
5 before?

6 A. Yes.

7 Q. When?

8 A. I saw it a few days ago but I'm
9 pretty sure I saw it over a year ago.

10 Q. And that would mean sometime in
11 2011 or do you mean sometime around the
12 date it bears?

13 A. I'm not sure.

14 Q. Do you remember seeing a copy of
15 this letter before it was signed by either
16 Mr. Eckert or Mr. Frank?

17 A. I did not see it before it was
18 signed.

19 Q. Was a draft of this letter ever
20 run past you by anyone on the GSC deal
21 team?

22 A. No.

23 Q. When you first saw it, did you
24 understand what the letter had been
25 prepared for, in other words to what use

1 E. N. Ordway

2 it was intended to be put?

3 MR. MANDELSBERG: Objection.

4 A. No, I wasn't sure exactly what
5 the use of this was going to be other than
6 as it related to probably our application
7 to get a success fee.

8 Q. Let's step back.

9 Did you understand that an
10 auction of substantially all but not quite
11 all of the assets of GSC took place in
12 late October, 2010?

13 A. Yes.

14 Q. Did you understand that
15 contemporaneously?

16 A. Yes.

17 Q. Did you ask Mr. Manzo or other
18 members of the deal team following the
19 auction in words or substance when will we
20 be applying for a success fee?

21 A. I don't recall when I might have
22 specifically asked that question but let
23 me say this, I'm sure I did.

24 Q. Was it ever contemplated that
25 you would not apply for a success fee

1 E. N. Ordway

2 following completion of that auction?

3 MR. MANDELSBERG: Objection.

4 You mean contemplated by him,
5 contemplated by someone else?

6 MR. WOOLNER: Steve's right, let
7 me break it down.

8 Q. Did you ever contemplate,
9 following the auction, that there would
10 not be a success fee sought?

11 A. No.

12 Q. So far as you are aware, did any
13 on the deal team you've described -- Mr.
14 Manzo, Mr. Zaidman, Mr. Butler -- ever
15 contemplate not seeking a success fee
16 following the completion of the auction?

17 A. Not that I'm aware of.

18 Q. Did you understand when you saw
19 this November 3, 2010 letter we're looking
20 at that it was intended to be offered in
21 some way in connection with seeking the
22 success fee?

23 A. I expected that it would be.

24 Q. Did you ask Mr. Manzo why it
25 didn't include an amount?

1 E. N. Ordway

2 A. No.

3 Q. Why not?

4 MR. MANDELSBERG: Objection.

5 A. I don't know. I'm not sure.

6 Q. You remember that the engagement
7 letter speaks of the amount and conditions
8 to be mutually agreed?

9 MR. MANDELSBERG: Objection.

10 A. Yes.

11 Q. But there's no amount here; is
12 there?

13 MR. MANDELSBERG: Objection.

14 A. No, there isn't.

15 Q. Did you suggest to Mr. Manzo
16 that there should be some other agreement
17 reached that included an amount?

18 A. No, I left it to him as to what
19 the best process was to proceed with
20 getting approval for a success fee.

21 Q. Did you check in with him at any
22 regular interval about where the
23 contemplated success fee stood?

24 A. From time to time we would
25 speak.

1 E. N. Ordway

2 Q. What did he tell you when you
3 asked him?

4 A. I don't have specific
5 recollection.

6 Q. Did he tell you on any of those
7 occasions why he wasn't seeking a success
8 fee at that time?

9 A. I don't specifically remember.

10 Q. Did you press him as to how
11 quickly a success fee could be sought?

12 A. I wouldn't use the words "press
13 him." I would ask him and he would tell
14 me when he thought it was appropriate and
15 I would defer to his judgment.

16 Q. What did you understand his
17 thinking process was as he communicated it
18 to you as to when it would be appropriate
19 to seek a success fee?

20 A. I don't remember.

21 Q. Did you have an understanding of
22 any kind on that subject following
23 completion of the auction?

24 A. You'll have to repeat your
25 question.

1 E. N. Ordway

2 Q. If this was being left in Mr.
3 Manzo's hands, which I think you just
4 said, right, when to apply for it, the
5 success fee?

6 A. Yes.

7 Q. What was your understanding of
8 the process he was going to go through in
9 deciding when it was appropriate?

10 A. I don't have an appreciation as
11 to what the process was that he was going
12 through.

13 Q. Did you care when it was?

14 MR. MANDELSBERG: Objection.

15 A. I certainly was interested in
16 getting it sooner than later but I
17 appreciated that a trustee was appointed,
18 for example, in December and that there
19 were complications associated with that so
20 I wasn't sure when the right timing was
21 and I deferred to him as to when that
22 would be.

23 Q. And when you said December, did
24 you mean December, 2010?

25 A. Yes.

1 E. N. Ordway

2 Q. Within that same document that I
3 believe you have in front of you, Mr.
4 Ordway, you will find a document titled
5 Exhibit B called summary of investment
6 banking/financial adviser performance
7 success fees approved in bankruptcy court.
8 It bears production number CAP 7.

9 Do you see that?

10 A. Yes.

11 Q. Have you ever seen that chart
12 before?

13 A. Yes.

14 Q. When?

15 A. I saw it this week and, although
16 I can't tell you when, I'm quite sure I've
17 seen this in the past.

18 Q. Do you recall under what
19 circumstances you saw it in the past?

20 A. No.

21 Q. Was it in connection in some way
22 with the seeking of a performance fee
23 here?

24 A. No.

25 Q. That reminds me, I did something

1 E. N. Ordway

2 with Mr. Manzo that I should do with you.

3 At his deposition we used the
4 terms "success fee" and "performance fee"
5 as essentially synonymous.

6 Is it fair to do the same with
7 you or do you distinguish in your own mind
8 in some way between the terms "success
9 fee" and "performance fee?"

10 A. I would like to use them as one
11 and the same.

12 Q. Good. I just wanted to have
13 that clear.

14 Coming back then, when you first
15 saw this document, Exhibit B, within
16 Exhibit BD 5, was it in conjunction with
17 the preparation of papers to be offered in
18 support of the success fee motion here?

19 A. No.

20 Q. In what circumstances did you
21 first see this document?

22 A. I don't recall precisely, but
23 let me explain the context.

24 I have a research department and
25 we keep track of information of this

1 E. N. Ordway

2 nature, we keep track of rights offerings,
3 we keep track of preferred stock issues
4 and what the terms and conditions are of
5 those so that when we're in a position
6 where we might be advising lenders or
7 advising companies as to what's
8 appropriate, we have the information. So
9 I suspect that I might have seen something
10 like this maybe in 2009 in some other
11 matters. It's information I have
12 internally at my firm.

13 Q. What do you understand it is?

14 A. It's a summary of some instances
15 where investment bankers or financial
16 advisers as the case may be, received
17 success fees.

18 Q. Do you personally have any
19 information about the circumstances under
20 which each of those advisers or investment
21 bankers received those success fees?

22 A. I know -- I had to pause to read
23 the list. I know some of them.

24 Q. Are there any of those listed as
25 one through forty-six that you personally

1 E. N. Ordway
2 believed to be comparable to the GSC
3 success fee you are seeking? And by you,
4 I mean Capstone.

5 MR. MANDELSBERG: Objection.

6 A. I don't know in particular.

7 Just in my experience in doing
8 this twenty-two, twenty-three years fees
9 of this nature range from one to three,
10 one's kind of low, three's kind of high,
11 so two is pretty standard as what this
12 chart suggests is an average.

13 Q. So when you refer to fees in
14 your last answer, you were referring to M
15 and A fees?

16 MR. MANDELSBERG: Objection.

17 A. To success fees.

18 Q. You're calling them success fees
19 and the chart calls them M and A fees;
20 right?

21 MR. MANDELSBERG: Objection.

22 A. The chart -- maybe we're looking
23 at two different charts.

24 MR. MANDELSBERG: Objection.

25 The chart that the witness is

1 E. N. Ordway

2 looking at is entitled Exhibit B,
3 Summary of Investment
4 Banking/Financial Adviser Performance
5 Success Fees Approved in Bankruptcy.

6 THE WITNESS: The columns say M
7 and A fee range.

8 Q. Is M and A fee in your lexicon
9 also synonymous with success fee?

10 A. Not necessarily.

11 Q. What's the difference?

12 A. Sometimes investment bankers get
13 success fees related to reorganizing
14 companies.

15 Q. Any other differences that you
16 can think of?

17 A. No.

18 Q. Do you intend in any way to
19 sponsor this chart or something like it in
20 connection with Capstone's request for a
21 success fee?

22 MR. MANDELSBERG: Objection.
23 Improper. Calls for a legal
24 conclusion.

25 You can answer if you know.

1 E. N. Ordway

2 MR. WOOLNER: I just want to be
3 very clear. If Mr. Ordway is not
4 going to be offered in support of this
5 chart or anything like it, I won't
6 need to ask him questions about it.

7 MR. MANDELSBERG: You can ask him
8 any questions you want but Mr. Ordway
9 is not needed in order to produce this
10 chart. You're making an assumption
11 that he is.

12 MR. WOOLNER: I'm simply --

13 MR. MANDELSBERG: You're also
14 making an assumption that it's going
15 to be introduced. You can ask him
16 about it but it's a grandiose
17 assumption on your part.

18 A. I don't know if it's our plan to
19 use this or not.

20 Q. If it is used, are you able to
21 sponsor it or not?

22 MR. MANDELSBERG: Objection.
23 Vague.

24 A. What does sponsor mean?

25 Q. Establishing what the chart is

1 E. N. Ordway

2 and why it is relevant to Capstone's
3 success fee motion.

4 MR. MANDELSBERG: Objection.

5 Calls for a legal conclusion. The
6 record already establishes.

7 A. That wouldn't be me.

8 Q. Do you have any information as
9 you sit here as to whether the financial
10 advisers listed in lines one through
11 forty-six were retained under Section 327
12 of the bankruptcy code?

13 A. I don't know the answer to that.

14 Q. Do you have any information as
15 to whether any of those financial advisers
16 were retained in these matters under
17 Section 328 of the bankruptcy code?

18 MR. MANDELSBERG: Objection.

19 A. Just so I'm clear, you're asking
20 me sitting here right now?

21 Q. Exactly.

22 A. No.

23 Q. Do you understand that there can
24 be a difference between retention under
25 Section 327 and retention under

1 E. N. Ordway
2 undertaking Section 328 when it comes to
3 obtaining fees in bankruptcy cases?

4 MR. MANDELSBERG: Objection. No
5 foundation. Calls for a legal
6 conclusion.

7 A. I understand there's a
8 difference.

9 Q. And you don't know whether in
10 these cases the retention was under one
11 section or the other?

12 MR. MANDELSBERG: Objection.
13 Asked and answered.

14 A. I don't know.

15 Q. In your experience, is it
16 typical when there is an M and A fee to
17 have a formula specified in advance for
18 determining the M and A fee?

19 MR. MANDELSBERG: Objection. No
20 foundation.

21 A. It's quite common.

22 Q. Is it, in fact, typical?

23 MR. MANDELSBERG: Objection. To
24 the extent you're asking Mr. Ordway to
25 testify as an expert, we haven't

1 E. N. Ordway

2 offered him as such and it's improper.

3 You can answer if you know.

4 A. It's typical.

5 Q. If you'll turn to the next

6 chart, it's marked CAP 8.

7 Have you seen this chart before?

8 A. Yes.

9 Q. When?

10 A. A few days ago.

11 Q. Did you see it before that?

12 A. No.

13 Q. Am I correct in assuming
14 therefore that you do not intend to
15 sponsor this chart in connection with the
16 hearing on Capstone's success fee motion?

17 MR. MANDELSBERG: Objection to
18 the form. Objection for lack of
19 foundation.

20 You can answer if you know.

21 A. No, I won't be.

22 Q. You're not in a position to
23 sponsor this chart; are you?

24 MR. MANDELSBERG: Objection to
25 the form.

1 E. N. Ordway

2 A. No.

3 Q. Please turn to the next page,
4 CAP 9, which is headed Exhibit D.

5 Have you seen this page before?

6 A. No.

7 Q. I said we were done with the
8 document but I do have one other question.

9 On Exhibit B, CAP 7 within BD 5,
10 do you know whether any of the
11 professionals listed received hourly
12 compensation in addition to M and A
13 compensation?

14 A. I don't know.

15 Q. In your experience, Mr. Ordway,
16 is it typical where there is a success or
17 transaction fee to negotiate whether there
18 will be an hourly fee as well?

19 MR. MANDELSBERG: Objection.

20 A. It's typically not the case.

21 Q. Just so we're clear, explain
22 what you mean.

23 A. Typically investment bankers
24 don't bill by the hour.

25 Q. Is that also true with financial

1 E. N. Ordway

2 advisers?

3 MR. MANDELSBERG: Objection.

4 A. I'm not sure of the question.

5 Q. Do you use the terms "financial
6 adviser" and "investment banker"
7 interchangeably?

8 A. No.

9 MR. MANDELSBERG: Objection.

10 Q. Is the same true -- you said
11 investment bankers typically don't bill by
12 the hour.

13 Is the same true for financial
14 advisers?

15 MR. MANDELSBERG: Objection.

16 A. Financial advisers bill fixed
17 monthly arrangements as well as hourly.

18 Q. And is that instead of or
19 potentially in addition to
20 transaction-based fees?

21 MR. MANDELSBERG: Objection.

22 Asked and answered.

23 You can answer again.

24 A. It could be in addition to.

25 Q. What is your personal billing

1 E. N. Ordway

2 rate, Mr. Ordway?

3 A. Seven hundred ninety-five.

4 Q. What was Mr. Manzo's billing
5 rate at the time --

6 MR. WOOLNER: Let me step back.

7 Q. Is Mr. Manzo still affiliated
8 with Capstone?

9 A. We still have an affiliation,
10 yes.

11 Q. What is the affiliation?

12 A. We have an amendment to his
13 existing agreement that's still operative
14 where we continue to provide him
15 compensation related to some cases that
16 have existed since 2011, 2010.

17 Q. What agreement are you referring
18 to in that answer? You said amendment to
19 an existing agreement. What agreement did
20 you refer to?

21 A. His contractor agreement.

22 Q. What is that?

23 A. What is a contractor agreement?

24 Q. What is his contractor
25 agreement?

1 E. N. Ordway

2 A. Are you asking me what the terms
3 are of his agreement?

4 Q. I want you to tell us about that
5 agreement, what is it first, and then I'll
6 ask you some follow-up questions.

7 A. It is a document that explains
8 his contractor relationship with Capstone
9 that outlines the types of services that
10 he'll be providing Capstone and how he'll
11 be compensated.

12 Q. Now, you told us earlier that
13 you snapped up Mr. Manzo as soon as his
14 time with FTI ended.

15 Did I understand that correctly?

16 A. Yes.

17 Q. Is the relationship that was
18 established by his contractor agreement
19 one that has applied from that time?

20 A. It's been modified since that
21 time, yes.

22 Q. But his association with
23 Capstone has at all times been subject to
24 a contractor agreement?

25 A. Yes.

1 E. N. Ordway

2 Q. Why was that?

3 MR. MANDELSBERG: Objection.

4 A. Bob preferred not to be an
5 employee or a partner and preferred to be
6 a contractor.

7 Q. So you, for example, as a
8 principal, you don't have a contractor
9 agreement with Capstone?

10 A. No.

11 Q. Does Mr. Zaidman?

12 A. No.

13 Q. Mr. Butler?

14 A. No.

15 Q. Is there anybody else at
16 Capstone who has such a contractor
17 agreement with Capstone?

18 MR. WOOLNER: I said that badly.

19 Let me rephrase it.

20 Q. Is that anyone else who has such
21 a contractor agreement with Capstone?

22 A. We have perhaps today one
23 contractor. We've had as many as thirteen
24 or fourteen.

25 Q. With those people, why were

1 E. N. Ordway
2 there contractor agreements? And I don't
3 want you to name names. I'm simply trying
4 to get an understanding.

5 A. We didn't insist that people
6 become employees or perhaps they had a
7 particular skill that was required for a
8 short period of time. It really depends
9 on the facts and circumstances of each
10 individual.

11 Q. Was there a standard form of
12 contractor agreement that was used at
13 different times with these individuals or
14 were they specifically tailored to each
15 one?

16 MR. MANDELSBERG: Objection.

17 A. We would generally start with a
18 standard form and tailor it to the
19 individual circumstance.

20 Q. Was Mr. Manzo your first
21 contractor?

22 A. I don't remember.

23 Q. Did Mr. Manzo give you any
24 information as to why he preferred a
25 contractor agreement rather than to be an

1 E. N. Ordway

2 employee?

3 A. I don't remember.

4 Q. Who negotiated his initial
5 contractor agreement?

6 A. I did.

7 Q. In substance what were the terms
8 under which he came to work as a
9 contractor for Capstone?

10 A. We engaged him to manage
11 engagements and his compensation was based
12 on principally three pieces. We paid him
13 for his billable hours, we paid him a
14 percentage of the revenues that he was
15 associated with, and thirdly we gave him a
16 small monthly fixed payment.

17 Q. In your listing of the three
18 components of his compensation, you
19 mentioned one, the second, as being a
20 percent of the revenue he was associated
21 with.

22 What did you intend to
23 communicate by that phrase "associate
24 with?"

25 A. Either engagements that he was

1 E. N. Ordway

2 actively managing or engagements that he
3 was instrumental in obtaining for the
4 firm.

5 Q. The third component you
6 mentioned was a small monthly fixed
7 amount.

8 Do you recall what that amount
9 was?

10 A. No, I don't.

11 Q. Was that monthly fixed amount
12 offset in any way against either his
13 billable hours or the percent of revenues
14 amounts that were the first two components
15 of his compensation?

16 A. No.

17 Q. So the monthly fixed fee was in
18 addition to the billable hours which was
19 in addition to the percent of revenues?

20 A. Yes.

21 Q. Now, you mentioned in an earlier
22 answer that he's still subject to an
23 existing agreement under an amendment.

24 Was that contractor agreement
25 amended at any point?

1 E. N. Ordway

2 MR. MANDELSBERG: Objection.

3 A. Several occasions.

4 Q. Why?

5 A. To modify it for changes in
6 circumstances.

7 Q. As best you can recall, what
8 were the changes made by the first
9 amendment to his contractor agreement?

10 A. I don't recall.

11 Q. How about the second amendment?

12 A. There might have been four or
13 five amendments so I don't know with
14 specificity what was included in each one
15 of those.

16 Q. Tell us what you do remember
17 about the sequence leading up to today.

18 A. The basic framework that I just
19 described was pretty much his arrangement
20 up through last year. Last year we
21 eliminated the fixed component. Again,
22 I'm not sure with precision what the date
23 of that was. And given the engagements
24 that he's still involved with, we're not
25 paying him for his hours. He's not

1 E. N. Ordway
2 billing through Capstone at the moment.
3 We're involved with some cases where he's
4 the named trustee and he's billing the
5 trust directly for his time so the only
6 component of his compensation that remains
7 might be a revenue sharing.

8 Q. What is the nature of the
9 revenue sharing that exists with respect
10 to the cases where Mr. Manzo is a named
11 trustee?

12 A. He gets a percentage of the
13 revenues, the realized revenues.

14 Q. Is it the same in every case or
15 does it differ case by case?

16 A. It's the same in every case with
17 respect to hourly arrangements. For
18 certain matters where we've had an
19 opportunity to get a success fee, we've
20 had different sharing arrangements.

21 Q. What is the arrangement in those
22 cases where there are hourly arrangements?

23 A. He gets a percentage of the
24 revenue and I don't recall if it's
25 fourteen or fifteen percent, it's

1 E. N. Ordway

2 something like that.

3 Q. In that range?

4 A. Yes.

5 Q. What is the arrangement in
6 matters where there's a success fee?

7 A. Forty -- sixty or fifty percent.

8 Q. Did you say forty, fifty, or
9 sixty?

10 MR. WOOLNER: Let's try it again.

11 Q. What is the arrangement in those
12 cases where there is a success fee?

13 A. It's either fifty percent or
14 sixty percent.

15 Q. When you say it's either fifty
16 or sixty percent, is that fifty or sixty
17 percent to Mr. Manzo or fifty or sixty
18 percent to Capstone?

19 A. Fifty or sixty percent to Manzo.

20 Q. Is there such an arrangement
21 with respect to GSC?

22 A. Yes.

23 Q. What is the arrangement with
24 respect to GSC?

25 A. He would receive sixty percent.

1 E. N. Ordway

2 Q. Does he share on an hourly basis
3 at approximately fourteen to fifteen
4 percent or is that strictly -- with
5 respect to the trustee work?

6 MR. MANDELSBERG: Objection.
7 Compound. Confusing.

8 MR. WOOLNER: Let me clarify.

9 Q. GSC is now in a trustee phase;
10 correct?

11 A. Correct.

12 Q. And an entity of which Mr. Manzo
13 is the sole member acts as liquidating
14 trustee?

15 A. Correct.

16 Q. Is the arrangement you've
17 described under which in certain cases
18 where Mr. Manzo acts as named trustee
19 there's a revenue sharing arrangement, is
20 that arrangement applicable here?

21 A. No.

22 Q. Why not?

23 MR. MANDELSBERG: Objection.

24 A. I don't recall why we decided
25 not to but we decided not to. He's going

1 E. N. Ordway

2 to bill his hours and we're going to bill
3 our hours. It's not a big project.

4 Q. Did he ask for revenue sharing
5 on the GSC matter while he was acting as
6 liquidating trustee?

7 A. No.

8 Q. Do you have an understanding as
9 to why not?

10 A. No.

11 Q. Where you have contractors
12 acting for Capstone, whether it's Mr.
13 Manzo or one of the others that you made
14 reference to generically, how do you
15 disclose that fact to the clients for whom
16 Capstone does work?

17 MR. MANDELSBERG: Objection.

18 A. Our engagement letters sometimes
19 refer to employees or contractors.

20 Q. Is that standard that it would
21 refer to a contractor where there is a
22 contractor?

23 A. Not standard. Not necessarily.

24 Q. Is there any standard disclosure
25 where a contractor is doing work on

1 E. N. Ordway

2 Capstone's behalf for a client?

3 A. Is there a standard disclosure?

4 Q. Is it standard for Capstone to
5 disclose to its clients when a contractor
6 is doing work on Capstone's behalf for
7 that client?

8 A. Yes.

9 Q. How?

10 A. Sometimes in writing, sometimes
11 verbally.

12 Q. Was such a disclosure made here
13 with respect to Mr. Manzo to GSC?

14 MR. MANDELSBERG: Objection.

15 Asked and answered.

16 A. I don't remember.

17 Q. You don't remember if a
18 disclosure was made at all?

19 MR. MANDELSBERG: Objection.

20 A. I don't remember.

21 Q. You don't have a recollection
22 now of making such a disclosure?

23 A. I'd like to say yeah, I did, but
24 I don't recall specifically if I did or
25 not.

1 E. N. Ordway

2 Q. You mentioned as the first
3 component of Mr. Manzo's compensation as a
4 contractor his billable hours.

5 Did I understand that correctly?

6 A. Yes.

7 Q. Did Mr. Manzo receive some
8 fraction of his rates times his billable
9 hours?

10 A. That's correct.

11 Q. What was that fraction?

12 A. Either eighty or eighty-five
13 percent.

14 Q. Did it change over time?

15 A. It might have changed from
16 eighty to eighty-five or seventy-five to
17 eighty.

18 Q. How many different matters did
19 Mr. Manzo work on for Capstone?

20 A. Since 2006?

21 Q. Since he joined you, yes.

22 A. Twenty.

23 Q. Does Capstone require that its
24 employees or contractors maintain any kind
25 of professional engagement calendar or

1 E. N. Ordway

2 schedule?

3 A. I'm not sure of the question.

4 Q. At law firms typically there is
5 a calendar maintained of upcoming dates in
6 matters on which the firm is engaged.

7 Does Capstone have any kind of
8 requirement that its employees or
9 contractors maintain any sort of
10 centralized schedule of upcoming dates in
11 connection with the engagements on which
12 it provides services?

13 A. I wouldn't say it's a
14 requirement but it's practically how we
15 conduct engagements and manage
16 engagements.

17 Q. Is there typically a centralized
18 calendar of some form that memorializes
19 dates that are relevant to the provision
20 of services on a particular engagement?

21 A. It's engagement by engagement.

22 Q. Was there such a calendar in the
23 GSC matter?

24 A. I don't know.

25 Q. If there isn't a centralized

1 E. N. Ordway

2 firm-maintained calendar for a matter, do
3 you expect that your professionals will
4 personally maintain calendars so they're
5 able to keep track of important dates?

6 A. Yes.

7 Q. Is there any requirement that
8 they do so?

9 A. I think it's kind of implicit
10 that they would.

11 Q. Is there any expectation that
12 those calendars will be maintained and
13 preserved?

14 MR. MANDELSBERG: Objection.

15 A. No, there's not a requirement.

16 Q. So far as you're aware, were the
17 calendars of the deal team members working
18 on GSC maintained and preserved?

19 A. I don't know.

20 Q. Did any members of the deal team
21 maintain calendars or schedules for their
22 work in connection with GSC?

23 A. I don't know.

24 Q. Do you have an explanation as to
25 why calendars or schedules would not have

1 E. N. Ordway

2 been produced in response to requests for
3 them?

4 A. I don't know.

5 Q. The second component you
6 mentioned with respect to Mr. Manzo's
7 arrangement with Capstone and his
8 compensation dealt with a percentage of
9 revenues with which he was associated
10 either in managing or bringing in.

11 Do you remember that?

12 A. Yes.

13 Q. Was there any kind of specific
14 percentage that was attributed to the
15 revenues that were associated with him in
16 either of those fashions?

17 A. Approximately fifteen percent.

18 Q. Was it the same whether he was
19 managing or bringing in the work?

20 A. The work that he managed was
21 almost always he was instrumental in
22 obtaining for the firm.

23 Q. So in his case there really
24 wasn't a meaningful difference between
25 those two kinds of associations that could

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E. N. Ordway
lead to revenue sharing?

A. That's correct.

(BEGIN CONFIDENTIAL --
ATTORNEYS' EYES ONLY PORTION)

1 E. N. Ordway

2 A F T E R N O O N S E S S I O N

3 June 1, 2012

4 1:31 p.m.

5 E D W I N N. O R D W A Y, having
6 been previously duly sworn by a Notary
7 Public of the State of New York,
8 upon being examined,
9 testified as follows:

10 EXAMINATION CONTINUED BY

11 MR. WOOLNER:

12 Q. Mr. Ordway, when we were talking
13 about the contractor agreement that
14 Capstone entered into with Mr. Manzo
15 immediately following his departure from
16 FTI, I think I asked you whether you had
17 any understanding as to why Mr. Manzo
18 wanted to enter into that agreement.

19 Did I ask you that question?
20 Because if not, I'd like to ask it again.

21 MR. MANDELSBERG: You did ask the
22 question. He did answer it.

23 A. I don't remember why he wanted
24 to have an agreement of that nature.

25 Q. Did you have any theories

1 E. N. Ordway
2 yourself as to why Mr. Manzo might be
3 trying to do it that way in having a
4 relationship with Capstone?

5 MR. MANDELSBERG: Objection.
6 Theory as differentiated from
7 reason?

8 MR. WOOLNER: I asked before, I
9 think, whether he was told by Mr.
10 Manzo. Now I'm asking if he, Mr.
11 Ordway, had a -- formed any kind of
12 view as to why Mr. Manzo might want to
13 do it on that basis.

14 MR. MANDELSBERG: Are you asking
15 him to guess? Because you've already
16 asked whether he knows and he said no.
17 You've already asked him whether he
18 knew of reasons and he said no. So
19 now you're asking him whether he has
20 any theory or any --

21 MR. WOOLNER: Not quite.

22 Q. Did you at the time form any
23 view as to why you thought he might be
24 doing it?

25 A. No, not that I remember.

1 E. N. Ordway

2 Q. Did you believe there were
3 tax-related reasons for him to do that?

4 A. Possibly. I really didn't probe
5 him. That was his preference and I
6 accepted it, it was workable.

7 Q. Was Mr. Manzo a positive
8 addition to Capstone?

9 A. Yes.

10 Q. As far as you are aware, was he
11 well regarded by the other Capstone
12 professionals? I knew you regard him
13 positively but did the other Capstone
14 professionals regard him positively?

15 A. Most of them did.

16 Q. If there was a contrary view,
17 what in substance was it?

18 MR. MANDELSBERG: Objection.

19 A. The senior people at Capstone
20 were all employees at FTI and many of them
21 were employees of Policano and Manzo and
22 some people didn't like the way that he
23 managed them when they had to report to
24 him.

25 Q. In what way?

1 E. N. Ordway

2 A. Just didn't like the way they
3 were treated.

4 Q. What way was that?

5 A. It's a personal issue. I had no
6 issues with it whatsoever but some of my
7 guys thought they weren't treated as well
8 as they should have been by Manzo when he
9 was in charge of them.

10 Q. Did you have an understanding of
11 what that kind of treatment was?

12 A. Not really.

13 Q. Did people come to you and
14 complain?

15 A. Well, they would occasionally
16 complain like gee, this isn't fair the way
17 he's treating me or assigning me. I
18 didn't think so, I thought everything was
19 reasonable.

20 Q. Was there a pattern of any kind?

21 A. No.

22 Q. Other than the complaints you
23 received about the way people felt they
24 were treated, did any of your colleagues
25 at Capstone complain to you about Mr.

1 E. N. Ordway

2 Manzo's handling of engagements where he
3 was the lead?

4 MS. SCHWARTZ: I didn't hear
5 that.

6 Q. Other than the complaints that
7 you heard from time to time from people
8 who were working for Mr. Manzo and didn't
9 like the way they were treated, did you
10 ever hear complaints from any of your
11 colleagues about the way he was handling
12 engagements for Capstone?

13 A. I had some people inquire about
14 the GSC engagement.

15 Q. Tell me why.

16 A. We were negotiating with --
17 before bankruptcy with lenders and some of
18 the lenders were unhappy with the
19 circumstance, not so much with Manzo but
20 just the circumstance.

21 Q. What do you mean?

22 A. The lenders were not going to
23 get a hundred cents on the dollar, it
24 looked like, in the arrangements that we
25 were pursuing.

1 E. N. Ordway

2 Q. Did they think that was somehow
3 Capstone's fault?

4 A. No. I mean, perhaps the lenders
5 did or some of them might have. It was
6 communicated to me that Manzo was being a
7 tough negotiator but that's what we were
8 hired to do so it's not an issue.

9 Q. Anything else that comes to
10 mind?

11 A. No.

12 Q. Are you aware of any clients
13 ever complaining about Mr. Manzo's billing
14 practices?

15 A. No.

16 Q. Have there been any disputes
17 within Capstone regarding billings on
18 cases managed by Mr. Manzo?

19 A. I've had some of my partners ask
20 me about his hours on some cases.

21 Q. What have they asked about?

22 A. Why were they so high in certain
23 given months.

24 Q. What was your answer?

25 A. It's the nature of the work.

1 E. N. Ordway

2 Q. When you got those questions,
3 did you investigate?

4 A. Sure.

5 Q. What did you do?

6 A. Speak to Bob, speak with people
7 who were on the deal team.

8 Q. Were any of those questions
9 about this matter, the GSC case?

10 A. I don't think so.

11 Q. Were you familiar from your
12 review of the bills with Mr. Manzo's hours
13 on this case?

14 A. Yes.

15 Q. Did you have any view about
16 their reasonableness?

17 A. Yes.

18 MR. MANDELSBERG: Objection.

19 Q. Did you discuss with him why
20 some of his monthly billings were so high?

21 MR. MANDELSBERG: Objection.

22 A. I understood why and we
23 discussed why. It was a very difficult
24 case and required a lot of time.

25 Q. Has Capstone had to write off

1 E. N. Ordway

2 time on matters managed by Mr. Manzo as a
3 result of billing disputes?

4 A. We've never had a write-off as
5 it relates to a dispute with a debtor. We
6 have had write-offs as a consequence of a
7 fee objection from let's say a U.S.
8 trustee.

9 Q. Is Mr. Manzo still subject to
10 the contractor agreement that you
11 described earlier?

12 A. We have some --

13 MR. MANDELSBERG: Objection.

14 A. We have a couple of tails to a
15 couple of engagements that he would still
16 be governed by the existing amendment.

17 Q. Let me see if I understand what
18 you just said.

19 Have the agreements terminated
20 subject to the continuing effectiveness of
21 certain terms within them; is that what
22 you were trying to communicate in your
23 last answer?

24 A. I'm not sure what you just said.

25 Q. Let's see if we can break it out

1 E. N. Ordway

2 a little.

3 Is Mr. Manzo still affiliated as
4 a contractor to Capstone?

5 A. He's not working for Capstone
6 anymore. However, there are some trailing
7 payments that we still owe him.

8 Q. When did that relationship under
9 the contractor agreement end aside from
10 trailing payments?

11 A. I'm not exactly sure but I would
12 say that it probably ended when we
13 completed the GSC engagement and he became
14 liquidating trustee. We were done at that
15 point.

16 MR. WOOLNER: Mr. Ordway, subject
17 to any follow-up after questions by
18 other counsel, I want to thank you for
19 your time and turn over the chair to
20 Ms. Schwartz.

21 MS. SCHWARTZ: I'm going to take
22 five minutes before I start.

23 (Whereupon a break was taken)

24 (CONTINUED ON NEXT PAGE)

25

1 E. N. Ordway

2 EXAMINATION BY

3 MS. SCHWARTZ:

4 Q. Good afternoon, Mr. Ordway. My
5 name is Andrea Schwartz. I introduced
6 myself to you earlier today at this
7 deposition. I am a trial attorney with
8 the U.S. Department of Justice Office of
9 the United States Trustee. I'm here today
10 representing Tracy Hope Davis, the United
11 States Trustee for Region Two.

12 Earlier Mr. Woolner had asked
13 you your experience in having depositions
14 taken; is that right?

15 A. Yes.

16 Q. And you testified that you're
17 familiar with the ground rules and
18 procedures for depositions; is that right?

19 A. Yes.

20 Q. The one thing I'm going to -- I
21 said to you earlier and I'll state it for
22 the record that our efforts here today are
23 to get the information that we need with
24 respect to our respective clients'
25 positions and the applications for fees by

1 E. N. Ordway

2 Capstone but we're making every effort to
3 not duplicate our questions to you.

4 I will ask you questions in
5 areas that Mr. Woolner had asked questions
6 before. I will do my very best not to ask
7 you the same question but I'm not perfect
8 and it may happen but I want you to know
9 that I'm endeavoring not to ask you an
10 exactly same question. But I listened
11 carefully to your testimony earlier and
12 I'm going to do my best.

13 All right?

14 A. Understood.

15 Q. One thing I would ask is that if
16 you don't understand a question that I ask
17 you, will you agree to tell me so that I
18 can rephrase that question?

19 A. Yes, I will.

20 Q. So if you don't tell me that you
21 don't understand the question, we will
22 assume that you understood the question
23 and your answer reflected your best
24 answer.

25 All right?

1 E. N. Ordway

2 A. Fair enough.

3 Q. What did you do to prepare for
4 today's deposition?

5 A. I had a meeting with Steve
6 Mandelsberg on Monday afternoon.

7 Q. One thing I also want to make
8 clear. Please know that none of the
9 questions I'm asking you are intended for
10 you to respond to me about communications
11 you had with your lawyer. That's not the
12 intent of my questions. Your lawyer's
13 sharp, he's going to see if I made a
14 mistake in my question or one of the
15 questions might delve into that but I want
16 you to know that's not my intent.

17 A. I understand.

18 MR. MANDELSBERG: We understand
19 that. We're going to reserve the
20 right to object to any question that's
21 improper as to form or otherwise
22 improper.

23 MS. SCHWARTZ: As you have the
24 right to do.

25 Q. Were you provided with a copy of

1 E. N. Ordway
2 the transcript from Mr. Manzo's
3 deposition?

4 A. No.

5 Q. So you have not seen that; is
6 that correct?

7 A. No.

8 Q. Did you speak with Mr. Manzo
9 after his deposition yesterday?

10 A. Wednesday.

11 Q. Wednesday, I misspoke.

12 A. Briefly.

13 Q. What did you speak about?

14 A. I asked him how it went and he
15 thought it went very well. He mentioned
16 that he spoke with you afterwards. That
17 was about it. I was actually in the
18 middle of a meeting and wasn't able to
19 give him more time but I think I got the
20 gist of it.

21 Q. Earlier in the beginning of your
22 deposition today when you were talking
23 about your experience, you said that you
24 have testified as an expert; is that
25 right?

1 E. N. Ordway

2 A. Yes.

3 Q. Could you tell us what -- can
4 you tell us about that.

5 A. Yes.

6 I've been engaged maybe fifteen,
7 twenty times either in bankruptcies or
8 specifically litigation matters where I
9 was preparing to be an expert, provide
10 expert testimony. Sometimes I only got to
11 the deposition point and it was settled or
12 sometimes I didn't even get to the point
13 where I was being deposed.

14 The principle areas that I was
15 preparing to provide expert testimony on
16 are things like plan feasibility, although
17 last year I was involved in a matter -- I
18 think it's confidential so I can't tell
19 you the name of the case -- that was
20 involved with a MAC clause argument on a
21 purchase arrangement where the buyer opted
22 to walk away from a purchase arrangement.

23 My first time testifying was in
24 1993 in bankruptcy court in New Orleans on
25 a contested bankruptcy matter. The last

1 E. N. Ordway

2 time I was deposed was in 2011 in a matter
3 called Almatis which was filed here in New
4 York.

5 Q. Did you provide expert testimony
6 in Almatis?

7 A. Yes. Sorry, deposition and then
8 we settled.

9 Q. What was the area you were
10 opining on?

11 A. We had a -- we were representing
12 a creditor constituency that was objecting
13 to a plan of reorganization and my firm
14 was engaged to critically challenge and
15 independently determine a valuation
16 separately from what the company's
17 advisers had developed.

18 Q. You mentioned that you testified
19 -- in what cases have you actually
20 testified in court?

21 A. I'm probably not going to
22 remember them all but there was a case in
23 Miami that I testified on in December,
24 2010 called Cabi Downtown, which was a
25 failed condominium development, about two

1 E. N. Ordway
2 hundred fifty million of bank debt
3 associated with that. I represented
4 lenders.

5 Q. And your testimony was on?

6 A. Plan feasibility.

7 I advised a debtor that filed in
8 New Jersey named Rockaway Bedding in the
9 Newark court and I testified on several
10 occasions regarding plan feasibility and
11 arrangements for liquidating stores, for
12 compensation arrangements for management,
13 things of that nature.

14 I testified in Chicago court
15 regarding a company called American
16 Classic Voyages regarding compensation
17 arrangements for senior executives.

18 The matter that I testified in
19 New Orleans was for a company named
20 Interurban Communications, two competing
21 plans.

22 I testified in court in Newark
23 for Judge Stern. He appointed me to be a
24 court-appointed examiner on a -- on Jazz
25 Photo was the name of that bankruptcy.

1 E. N. Ordway

2 I'm not remembering other
3 in-court testimony but there were other
4 depositions.

5 Q. I know you testified earlier
6 that you got a degree from Rutgers I think
7 it was economics; is that right?

8 A. Accounting and economics, double
9 major.

10 Q. After obtaining that degree from
11 Rutgers, did you obtain any subsequent
12 educational degrees?

13 A. No.

14 Q. Did you obtain any subsequent
15 licenses?

16 A. I'm a CPA.

17 Q. Is your CPA license current?

18 A. Yes.

19 Q. I know you said also that you
20 testified that you worked at Arthur
21 Andersen?

22 A. Yes.

23 Q. Did you have a particular focus
24 on the type of work you did?

25 A. I was in the audit group.

1 E. N. Ordway

2 Q. Would you characterize yourself
3 as having any particular expertise in a
4 particular area?

5 A. Workout consulting, you know,
6 restructuring.

7 Q. When did you first start doing
8 that?

9 A. When I was at Arthur Andersen, I
10 did some bankruptcy consulting but that
11 was not full time. I did audits and I did
12 some bankruptcy work. I started to do
13 this full time in July of 1991.

14 Q. You said that you testified on
15 some compensation -- as an expert on
16 compensation arrangements; is that
17 correct?

18 A. Yes.

19 Q. Could you tell us about your
20 background and expertise in that area.

21 A. Since I began to do
22 restructuring work, I've worked on over
23 two hundred engagements and it's very
24 typical -- maybe about a hundred of them
25 wound up in bankruptcy. We do a lot of

1 E. N. Ordway
2 out-of-court work. But it's typical in
3 almost all of these instances that we
4 review compensation arrangements for
5 employees and what's appropriate given the
6 circumstances. So I would consider myself
7 an expert in executive compensation in
8 troubled situations.

9 Q. I'd like to ask you some
10 questions about Capstone.

11 You testified earlier that you
12 were one of the persons that formed that
13 company; is that correct?

14 A. Yes.

15 Q. Is Capstone one corporate entity
16 or multiple?

17 MR. MANDELSBERG: Objection.

18 A. Here's the structure. Capstone
19 Advisory Group, LLC is a limited liability
20 company formed in Delaware. It has ten
21 members. It owns two other entities that
22 are both LLCs. One of them is called
23 Capstone Valuation Services, LLC and
24 another one I don't remember precisely the
25 name but it's for my Bogota, Colombia

1 E. N. Ordway

2 office.

3 Q. Is Capstone AG, LLC the parent
4 company of those two entities?

5 A. Did I say AG? I meant advisory
6 group.

7 Q. You did say advisory group. I
8 just said AG. I wrote it so I could get
9 it down faster.

10 MR. MANDELSBERG: You're
11 abbreviating.

12 A. Yes is the answer.

13 Q. And you said that Capstone
14 Advisory Group -- and now for purposes of
15 going on I'll just refer to it as Capstone
16 -- you said that Capstone has ten members;
17 is that right?

18 A. Yes.

19 Q. And you're a member; is that
20 right?

21 A. Yes.

22 Q. And you are the managing member;
23 is that right?

24 A. There's two managing members.

25 Q. Who is the other managing

1 E. N. Ordway

2 member?

3 A. Chris Kearns, I think you know
4 him, K E A R N S.

5 Q. I think he came here the other
6 day and said hello.

7 Now, I'd like to understand the
8 Capstone corporate structure.

9 You have ten members that are
10 owners of the company; is that right?

11 A. Yes.

12 MR. MANDELSBERG: Objection.

13 You mean the Capstone, LLC
14 structure?

15 MS. SCHWARTZ: Yes, I said before
16 when I used Capstone I was going to
17 refer to Capstone Advisory Group, LLC.

18 A. I understand.

19 Q. And they're all owners; right?

20 A. Yes.

21 Q. They own different percentages
22 of units or does everybody own the same?

23 A. Different.

24 Q. Do you own the most?

25 A. Yes.

1 E. N. Ordway

2 Q. How many employees does Capstone
3 have today?

4 A. I think it's one hundred five.

5 Q. Do you consider the members to
6 also be employees?

7 A. Yes, when I make that count, I'm
8 talking about the size of the firm. So
9 it's ninety-five and ten members.

10 Q. Is Capstone or any of its
11 entities an investment bank?

12 MR. MANDELSBERG: Objection.

13 A. No. We from time to time
14 provide investment banking services but we
15 don't refer to ourselves as an investment
16 bank.

17 Q. Could you expand on what you
18 just said.

19 A. Sometimes on engagements we get
20 involved in where we were initially
21 engaged as financial advisers evolve to
22 where investment banking services are
23 required. Depending on the engagement we
24 may either suggest that we can provide
25 that service or we may suggest that

1 E. N. Ordway

2 separately an investment banker be hired
3 either in place of us or to work alongside
4 with us.

5 Q. I may pause in asking you
6 questions as I go down my list if they've
7 already been asked so I don't repeat them.

8 A. I understand.

9 Q. You said one hundred five
10 employees?

11 A. And then I corrected it and said
12 ninety-five and ten members, yes.

13 Q. So they're all employees, you
14 consider them all employees of the
15 company; right?

16 A. And they are employees.

17 Q. A little earlier in your
18 deposition testimony you said that
19 presently Capstone has one contractor; is
20 that right?

21 A. Yes.

22 MR. MANDELSBERG: Objection.

23 Q. Who is that?

24 A. His last name is Butler. Not
25 the same Butler who's in our fee